

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

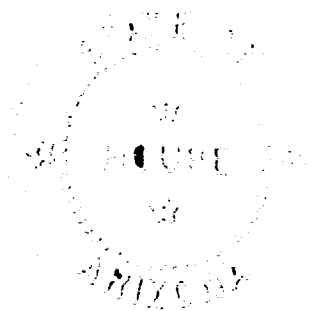
CHAPTER 218

SENATE BILL 1369

AN ACT

AMENDING TITLE 37, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-288.01; AMENDING SECTION 37-322.03, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 2, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-503; RELATING TO PERSONAL PROPERTY AND IMPROVEMENTS ON STATE LAND.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 37, chapter 2, article 4, Arizona Revised Statutes,
3 is amended by adding section 37-288.01, to read:

4 37-288.01. Disposition of personal property abandoned by lessee
5 at the end of the lease; definition

6 A. WITHIN NINETY DAYS AFTER THE DATE OF EXPIRATION OR CANCELLATION OF
7 A LEASE OF STATE LAND, THE LESSEE SHALL REMOVE THE LESSEE'S PERSONAL PROPERTY
8 FROM THE STATE LAND AND GIVE WRITTEN NOTICE TO THE DEPARTMENT OF THE NAME AND
9 ADDRESS OF ANY PERSON KNOWN TO THE LESSEE WHO OWNS ANY PERSONAL PROPERTY
10 REMAINING ON THE STATE LAND.

11 B. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, AFTER NINETY
12 DAYS, THE DEPARTMENT MAY SELL THE PROPERTY AT PUBLIC AUCTION OR CAUSE IT TO
13 BE SOLD AT PUBLIC AUCTION. BEFORE AUCTIONING PROPERTY, THE DEPARTMENT SHALL:

14 1. ATTEMPT TO IDENTIFY ANY LIENHOLDER OF RECORD IF ALL THE FOLLOWING
15 APPLY:

16 (a) THE OWNER OF THE PROPERTY IS KNOWN TO THE DEPARTMENT.

17 (b) THE PROPERTY IS MECHANICAL EQUIPMENT BEARING A SERIAL NUMBER OR
18 REGISTRATION NUMBER.

19 2. GIVE WRITTEN NOTICE TO THE OWNER OF ANY LIENHOLDER OF RECORD
20 IDENTIFIED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION.

21 C. THE DEPARTMENT'S NOTICE TO AN OWNER PURSUANT TO SUBSECTION B OF
22 THIS SECTION SHALL STATE:

23 1. THAT THE DEPARTMENT WILL AUCTION THE PROPERTY.

24 2. THE TIME AND PLACE OF THE AUCTION, WHICH MUST BE AT LEAST TEN DAYS
25 AFTER THE OWNER RECEIVES THE NOTICE.

26 3. THAT THE DEPARTMENT WILL SEND THE OWNER THE PROCEEDS OF THE AUCTION
27 AFTER DEDUCTING AMOUNTS EQUAL TO THE AMOUNT OF ANY DELINQUENT RENT, PENALTY
28 AND INTEREST, THE AMOUNT OF ANY LIEN PURSUANT TO SECTION 37-288, SUBSECTION
29 C AND THE COSTS OF NOTIFICATION AND AUCTION. UNPAID COSTS OF NOTIFICATION
30 AND AUCTION SHALL BE A LIEN ON THE PROPERTY. ANY LIEN PURSUANT TO SECTION
31 37-288, SUBSECTION C SHALL BE FIRST PRIORITY FOR PAYMENT AND A LIEN FOR COSTS
32 OF NOTIFICATION AND AUCTION PURSUANT TO THIS SECTION SHALL BE SECOND
33 PRIORITY.

34 4. THAT THE OWNER MAY CLAIM THE PROPERTY BY APPEARING AT THE AUCTION
35 AND PAYING THE AMOUNT OF ANY DELINQUENT RENT, PENALTY AND INTEREST, THE COSTS
36 OF NOTIFICATION AND AUCTION AND THE AMOUNT OF ANY LIEN ON THE PROPERTY
37 PURSUANT TO SECTION 37-288, SUBSECTION C.

38 D. THE DEPARTMENT'S NOTICE TO A LIENHOLDER OF RECORD PURSUANT TO
39 SUBSECTION B OF THIS SECTION SHALL STATE:

40 1. THAT THE DEPARTMENT WILL AUCTION THE PROPERTY.

41 2. THE TIME AND PLACE OF THE AUCTION, WHICH MUST BE AT LEAST TEN DAYS
42 AFTER THE LIENHOLDER RECEIVES THE NOTICE.

43 3. THAT THE LIENHOLDER MAY RECOVER THE PROPERTY ACCORDING TO THE TERMS
44 OF THE LIENHOLDER'S SECURITY AGREEMENT BEFORE THE AUCTION.

1 4. THAT THE DEPARTMENT WILL SEND THE LIENHOLDER THE PROCEEDS OF THE
2 AUCTION AFTER DEDUCTING THE DEPARTMENT'S COSTS OF IDENTIFYING THE LIENHOLDER,
3 NOTIFICATION AND AUCTION IF THE LIENHOLDER DOES NOT RECOVER THE PROPERTY
4 BEFORE AUCTION.

5 E. THE DEPARTMENT SHALL HOLD ANY EXCESS PROCEEDS OF A SALE UNDER
6 SUBSECTION B THAT ARE RETURNED AS UNDELIVERABLE FOR TWELVE MONTHS AFTER THE
7 SALE. AFTER TWELVE MONTHS, THE DEPARTMENT SHALL DEPOSIT THE EXCESS PROCEEDS
8 IN THE FUND OF THE BENEFICIARY FOR WHOM THE LAND IS HELD IN TRUST.

9 F. IF THE DEPARTMENT REASONABLY DETERMINES THAT THE VALUE OF THE
10 PROPERTY IS LESS THAN OR EQUAL TO THE COST OF REMOVING IT, THE DEPARTMENT MAY
11 DESTROY OR OTHERWISE DISPOSE OF THE PROPERTY. BEFORE DESTROYING OR DISPOSING
12 OF THE PROPERTY, THE DEPARTMENT SHALL SEND A WRITTEN NOTICE TO THE OWNER
13 INDICATING THAT:

14 1. THE DEPARTMENT HAS DETERMINED THAT THE VALUE OF THE PROPERTY IS
15 LESS THAN OR EQUAL TO THE COST OF REMOVING IT.

16 2. THE DEPARTMENT WILL DESTROY OR DISPOSE OF THE PROPERTY AT ANY TIME
17 BEGINNING THIRTY DAYS AFTER THE OWNER RECEIVES THE NOTICE.

18 3. THE DEPARTMENT'S VALUATION OF THE PROPERTY IN RELATION TO THE COSTS
19 OF REMOVAL IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6,
20 ARTICLE 10.

21 G. IF AN OWNER APPEALS THE DEPARTMENT'S VALUATION OF THE PROPERTY
22 PURSUANT TO SUBSECTION F, PARAGRAPH 3 OF THIS SECTION, THE DEPARTMENT SHALL
23 ATTEMPT TO IDENTIFY ANY LIENHOLDER OF RECORD IF THE PROPERTY IS MECHANICAL
24 EQUIPMENT BEARING A SERIAL NUMBER OR REGISTRATION NUMBER. IF THE DEPARTMENT
25 FINDS A LIENHOLDER OF RECORD, THE DEPARTMENT SHALL NOTIFY THE LIENHOLDER THAT
26 THE LIENHOLDER MAY APPEAL THE DEPARTMENT'S VALUATION OF THE PROPERTY PURSUANT
27 TO TITLE 41, CHAPTER 6, ARTICLE 10.

28 H. NOTICES TO OWNERS AND LIENHOLDERS UNDER THIS SECTION MUST BE BY
29 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE OWNER'S OR
30 LIENHOLDER'S LAST ADDRESS OF RECORD WITH THE DEPARTMENT.

31 I. THE SAME PROCEDURE FOR THE SALE OR DISPOSITION OF PERSONAL PROPERTY
32 PRESCRIBED BY THIS SECTION MAY ALSO BE USED AFTER THE TERMINATION,
33 CANCELLATION OR EXPIRATION OF A PERMIT, RIGHT-OF-ENTRY, CERTIFICATE OF
34 PURCHASE OR OTHER INSTRUMENT ISSUED BY THE DEPARTMENT.

35 J. FOR THE PURPOSES OF THIS SECTION:

36 1. "LIENHOLDER OF RECORD" OR "LIENHOLDER" MEANS ANY PERSON WHO HAS
37 PERFECTED A SECURITY AGREEMENT PURSUANT TO TITLE 47, CHAPTER 9, ARTICLE 3.

38 2. "OWNER" MEANS A FORMER LESSEE OR OTHER PERSON WHO OWNS PROPERTY ON
39 STATE LAND AFTER THE EXPIRATION OR TERMINATION OF A LEASE, PERMIT, RIGHT OF
40 ENTRY, CERTIFICATE OF PURCHASE OR OTHER INSTRUMENT ISSUED BY THE DEPARTMENT.

1 Sec. 2. Section 37-322.03, Arizona Revised Statutes, is amended to
2 read:

3 37-322.03. Improvements on state lands; taxation; disposition
4 on termination of lease; statement of improvements

5 A. All improvements placed upon state land shall, until they become
6 the property of the state, be subject to assessment for taxes in the name of
7 the owner, as other property.

8 B. ~~A lessee of state lands,~~ Within sixty days prior to BEFORE or
9 ninety days following the expiration of his A lease OF STATE LAND, THE LESSEE
10 may remove from the land the LESSEE'S removable improvements ~~belonging to~~
11 him, IF the removal of ~~which~~ will not injure the land. Wells, embankments
12 or dams designed for development, storage or conservation of water shall not
13 be taken away, destroyed or injured, but shall remain as appurtenant to the
14 land and shall be removed, destroyed or altered only by authority of the
15 department.

16 C. The retiring lessee may, with written authority from the
17 department, and within the time for removal, sell his THE LESSEE'S
18 improvements to the succeeding lessee.

19 D. At the commissioner's request, a lessee shall file with the
20 department a sworn statement setting forth the character of the improvements
21 and their actual cash value.

22 E. IF AN IMPROVEMENT REMAINS ON THE LAND AFTER NINETY DAYS AFTER THE
23 LEASE TERMINATION, THE DEPARTMENT MAY REMOVE, DESTROY OR OTHERWISE DISPOSE
24 OF THE IMPROVEMENT IF THE DEPARTMENT REASONABLY DETERMINES THAT ANY OF THE
25 FOLLOWING APPLY TO THE CONDITION OF THE IMPROVEMENT:

26 1. THE IMPROVEMENT MUST BE REPAIRED BEFORE IT CAN BE USED FOR THE
27 PURPOSE FOR WHICH IT WAS PLACED ON THE LAND, AND THE COST OF REPAIRS WOULD
28 EQUAL OR EXCEED THE VALUE OF THE REPAIRED IMPROVEMENT.

29 2. THE IMPROVEMENT MUST BE REPAIRED BEFORE IT CAN BE USED FOR THE
30 PURPOSE FOR WHICH IT WAS PLACED ON THE LAND AND THE VALUE OF THE IMPROVEMENT
31 BEFORE REPAIR IS EQUAL TO OR LESS THAN THE COST OF DISPOSING OF THE
32 IMPROVEMENT.

33 3. THE EXISTENCE OF THE IMPROVEMENT IN ITS CURRENT CONDITION IS
34 UNSAFE, POSES AN UNREASONABLE RISK OF INJURY TO PERSONS OR PROPERTY, VIOLATES
35 AN APPLICABLE PROVISION OF LAW OR IS A NUISANCE.

36 4. THE IMPROVEMENT IS NOT AUTHORIZED BY THE DEPARTMENT AND IS NOT IN
37 THE BEST INTEREST OF THE TRUST.

38 F. BEFORE DISPOSING OF AN IMPROVEMENT PURSUANT TO SUBSECTION E OF THIS
39 SECTION, THE DEPARTMENT SHALL SEND WRITTEN NOTICE TO THE FORMER LESSEE, BY
40 CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND ADDRESSED TO THE LESSEE'S LAST
41 ADDRESS OF RECORD WITH THE DEPARTMENT, THAT:

42 1. THE DEPARTMENT INTENDS TO REMOVE, DESTROY OR OTHERWISE DISPOSE OF
43 THE IMPROVEMENT AT ANY TIME BEGINNING THIRTY DAYS AFTER THE LESSEE'S RECEIPT
44 OF THE NOTICE.

1 2. THE DEPARTMENT'S DETERMINATION PURSUANT TO SUBSECTION E OF THIS
2 SECTION IS APPEALABLE PURSUANT TO SECTION 37-215.

3 Sec. 3. Title 37, chapter 2, article 12, Arizona Revised Statutes, is
4 amended by adding section 37-503, to read:

5 37-503. Disposition of personal property unlawfully abandoned
6 on state land

7 A. EXCEPT AS PROVIDED BY TITLE 28, CHAPTER 11 AND SECTION 37-288.01,
8 THE DEPARTMENT MAY DISPOSE OF OR CONTRACT FOR THE DISPOSAL OF PERSONAL
9 PROPERTY ON STATE LAND WITHOUT LEGAL PROCESS IF THE DEPARTMENT REASONABLY
10 DETERMINES THAT THE PROPERTY WAS DEPOSITED BY:

11 1. A PERSON WHO WAS TRESPASSING ON STATE TRUST LAND.

12 2. A PERMITTEE OR LESSEE OF THE DEPARTMENT WHO DEPOSITED THE PROPERTY
13 WHILE ENGAGING IN ACTIVITIES THAT ARE NOT AUTHORIZED BY THE PERMIT OR LEASE.

14 B. IF THE DEPARTMENT REASONABLY DETERMINES THAT THE VALUE OF THE
15 PROPERTY IS MORE THAN THE COST OF REMOVING IT, THE DEPARTMENT:

16 1. SHALL POST A CONSPICUOUS NOTICE OF PENDING DISPOSAL OF THE PROPERTY
17 AT LEAST TEN DAYS BEFORE DISPOSING OF THE PROPERTY PURSUANT TO SUBSECTION A
18 OF THIS SECTION.

19 2. MAY DELIVER THE PROPERTY TO THE DEPARTMENT OF ADMINISTRATION FOR
20 DISPOSAL PURSUANT TO TITLE 41, CHAPTER 23, ARTICLE 8, IF THE PROPERTY IS NOT
21 REMOVED WITHIN TEN DAYS AFTER THE DEPARTMENT POSTS THE NOTICE PURSUANT TO
22 PARAGRAPH 1 OF THIS SUBSECTION.

23 C. THIS SECTION DOES NOT LIMIT THE DEPARTMENT FROM RECOVERING ITS
24 COSTS OF REMOVING AND DISPOSING OF PERSONAL PROPERTY ON STATE LAND ACCORDING
25 TO THE TERMS OF A PERMIT OR LEASE OR AS OTHERWISE ALLOWED BY LAW.

APPROVED BY THE GOVERNOR MAY 15, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2002.

Passed the House May 2, 2002,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

Passed the Senate March 28, 2002,

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

[Signature]
President of the Senate

Norma Lowe
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1369

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 9, 2002

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Randall Arant
President of the Senate

Chiemmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of May, 2002

at 2:48 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 15th day of

May, 2002,

at 9:46 o'clock P M.

Jane V. Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of May, 2002

at 4:39 o'clock P M.

Robert Taylor
Secretary of State

S.B. 1369